IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 610 OF 2003

Motilal Chouthiprasad Varma)
Life Convict Prisoner No. C-11301)
(at present Central Prison , Yerawada))
Pune-411 006.).. Appellant

Versus

The State of Maharashtra ...Respondent

Shri S.M. Deshpande for the appellant.
Smt. V.R. Bhosale, Additional Public Prosecutor, for the State.

CORAM: **V.G. PALSHIKAR, Ag. C.J., &**
SMT. NISHITA MHATRE, J.

DATE: **AUGUST 28, 2006**.

ORAL JUDGMENT (Per Palshikar, Ag. C.J.)

Being aggrieved by the judgment and order dated 25th April, 2000 passed in Sessions Case No. 353 of 1999, by the learned Additional Sessions Judge, Pune, the appellant named above has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us during the course of the arguments.

2. We have, with the assistance of the learned Advocate for the appellant and the learned Additional Public Prosecutor, scrutinised the entire record and re-appreciated the evidence.

3. The case of the prosecution, as is disclosed on such re-appreciation, stated briefly, is that deceased Alok Narayanrao Kirdak, is the husband of Parinita Alok Kirdak who is examined as P.W.2. The deceased had a motor garage at Somatana Phata on Bombay-Pune Road. He had one Balu Ramkisan Disle as a Helper working with him. He has examined as P.W.4. Ashish Gamson Dethe (P.W.5) was also working with the deceased as a Painter. The accused was working in that garage as a watchman about eight months prior to the date of incident which is 22nd March, 1999. On that day at about 8.10 a.m. the accused was sitting on the tractor parked in front of the garage of Complainant Ashish. When the complainant went inside, he was told that the accused is sitting there with the intention of assaulting the deceased who was the owner of the garage. Therefore, the complainant tried to contact the owner on phone who was told that he has already left for the garage. The deceased thereafter arrived , went

into the garage and offered morning prayers before the photo frames of god. The accused went in, lifted an iron pipe lying lying there and hit it on the head of victim Alok, who, as a result of which, was hurt and there was scuffle between the accused and the deceased. In that scuffle, deceased fell down and the accused gave two more blows with the iron pipe on his head. The others present there ran away. Complainant went to the police to complain and when he returned after telling the police about the incident he saw accused was throwing the articles out of the garage. Police came, arrested the accused and investigated the offence. To prove the case, the prosecution examined seven witnesses. On appreciation of the evidence, the learned trial Judge came to the conclusion of guilt and, therefore, sentenced the accused to suffer rigorous imprisonment for life, as aforesaid. It is this order which is challenged in this appeal.

4. The learned counsel appearing on behalf of the appellant submitted that the learned trial Judge erred in convicting the accused of murder as there is no evidence of any intention to commit murder on the record of the case. Factually, the deceased owed salary to the accused and there was a quarrel on this point. It cannot, therefore, be

said that it was a motive strong enough to cause murder. The learned Advocate also pointed out certain differences in the deposition of eye witnesses and contended that in such circumstances, the order of conviction is unsustainable.

5. In the alternative, the learned Counsel submitted that no case whatsoever is made out under Section 302 of the Indian Penal Code. According to him, the intention of the accused to commit murder is not proved. Intention of the accused was only to give vent to his anger for non-payment of his salary bill and, therefore, it was an error of law committed by the learned trial Judge in convicting the accused under Section 302 of the Indian Penal Code.

6. As aforesaid, we have considered the entire evidence, scrutinised the same and re-appreciated the same. We are unable to accept the contentions raised by the learned Advocate in relation to disbelieving of the evidence of the seven witnesses examined by the prosecution. The witnesses appeared fruitful from their deposition and the tenor of their cross-examination. There is no error committed by the learned trial Judge in properly appreciating their evidence and,

therefore, we are in agreement with the findings recorded by the learned trial Judge. The conclusion that the accused was guilty of assaulting the deceased was also correct. We will, therefore, endorse the findings to that extent as recorded by the learned trial Judge.

7. That takes us to the contention raised by the learned advocate that no offence under Section 320 of the Indian Penal Code is made out. The learned advocate placed heavy reliance on three judgments of the Supreme Court of India. According to the Advocate, no case for holding the accused guilty of offence punishable under Section 302 of the Indian Penal Code is made out. According to him, it is a case of only two hits with the pipe. It cannot lead to an irresistible inference of intention to commit murder. Reliance was placed on a judgment of the Supreme Court of India in the case of *State of M.P.* vs. *Kalu Ram and another,* reported in [(2004) 12 SCC 543] where the Supreme Court has held that where it is a case of single blow and there is no record of previous enmity, conviction under Section 302 of the I.P.C. is not proper. However, in the instant case, the blows were two or three and record of previous enmity is obviously there. This judgment is, therefore, of no use to the learned advocate.

8. Then reliance was placed on the judgment of the Supreme Court of India in the case of *Ravi Kumar* vs. *State of Punjab* [(2005) 9 SCC 315) where the Supreme Court has observed that when there is a quarrel between the parties as a result of which talks of settlement go on and quarrel again ensued, it is not proper to convict the accused under Section 302 of the I.P.C. The Supreme Court, therefore, convicted the accused therein under Section 304 Part II instead of under Section 302 of the I.P.C. This case is very similar to the case in hand. Here there was a dispute regarding payment of salary. The victim invited the accused to the garage to settle the dispute and then the assault took place. It is difficult, in such circumstances, to come to the conclusion of existence of intention to commit murder.

9. Yet another case relied upon by the learned advocate is the decision of the Supreme Court in the case of *Shivappa Buddappa Kolkar* vs. *State of Karnataka and others* [2005 SCC (Cri.) 93] where the Supreme Court has observed that where in sudden heat of ire assault is made, it is difficult to presume existence of intention to commit murder. In our opinion, the reliance on these two judgments by the learned

advocate for the appellant is well placed. In the present case, the accused was not paid his salary for some time and was, therefore, in a dire need of money and was not receiving his legitimate dues. This enraged him to assault the deceased the moment when he saw in the garage. It cannot, in the circumstances, be said that he had the intention to commit murder of the deceased. He wanted to give vent to his anger and frustration. In our opinion, the learned trial Judge erred in sentencing the accused under Section 302 of the I.P.C..

10. In the result, the appeal succeeds partly and is allowed partly. The conviction and sentence passed under Section 302 of the I.P.C. is set aside. Instead, the accused is convicted under Section 304 Part II of the I.P.C. and sentenced to suffer rigorous imprisonment for a period of five years. If the period is over, the accused is liable to be released forthwith, if not otherwise required in any other case.